

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.2751 of 2016

and C.M.P.No.19898 of 2016

R.Maheswaran ... Appellant

Vs.

R.Ammasaiappan ... Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (d) read with Section 106 of the Civil Procedure Code against the fair and decretal order dated 29.07.2016 passed in I.A.No.223 of 2016 in O.S.No.55 of 2013 on the file of the II Additional District Court, Erode.

For Appellant : Mr.P.Mani
For Respondent : Mr.N.Manokaran

J U D G M E N T

Challenging the fair and final order passed in I.A.No.223 of 2016 in O.S.No.55 of 2013 on the file of the II Additional District Court, Erode, the 2nd defendant has filed the above appeal.

2.The respondent/plaintiff filed the suit in O.S.No.55 of 2013 for specific performance and for delivery of possession.

3.The 2nd defendant has filed his written statement and was contesting the suit.

4.When the suit was posted for trial on 29.02.2016, since the 2nd defendant failed to appear before the trial Court, he was set exparte and an exparte decree was passed on 29.02.2016. Thereafter, the 2nd defendant filed an application in I.A.No.223 of 2016 to set aside the exparte decree dated 29.02.2016. In the affidavit filed in support of the petition, the 2nd defendant has stated that he could not appear before the trial Court on 29.02.2016 for the reason that his wife, who was conceived for five months, was taken to hospital for check-up. The trial Court dismissed the application finding that the 2nd defendant has not

produced the medical records to prove that his wife was taken to hospital on 29.02.2016.

5. Admittedly, there is no delay in filing the application to set aside the exparte decree. Infact, the application was filed on 23.03.2016 itself. The 2nd defendant has satisfactorily explained the reasons for his non-appearance on 29.02.2016. The trial Court should have taken a lenient view and should have given an opportunity to the 2nd defendant to contest the suit. Since the 2nd defendant has satisfactorily explained the reasons for his non-appearance on 29.02.2016, I am of the view that he should be given an opportunity to contest the suit on merits.

6. In view of the same, the fair and decreetal order passed in I.A.No.223 of 2016 in O.S.No.55 of 2013 are set aside, on condition the appellant/2nd defendant paying a sum of Rs.2,000/- (Rupees Two Thousand only) as costs to the respondent/plaintiff within two weeks from the date of receipt of this judgment. On payment of costs, the order passed in I.A.No.223 of 2016 shall be set aside and consequently, the application in I.A.No.223 of 2016 stands allowed.

7. The II Additional District Judge, Erode is directed to dispose of the suit in O.S.No.55 of 2013 on merits and in accordance with law within a period of three months from the date of receipt of a copy of this judgment.

8. It is made clear that the appellant is at liberty to make the payment of Rs.2,000/- to the learned counsel appearing for the respondent in this appeal before this Court within the stipulated time and file proof of payment of the said amount before the Registry of this Court.

9. With these observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

va

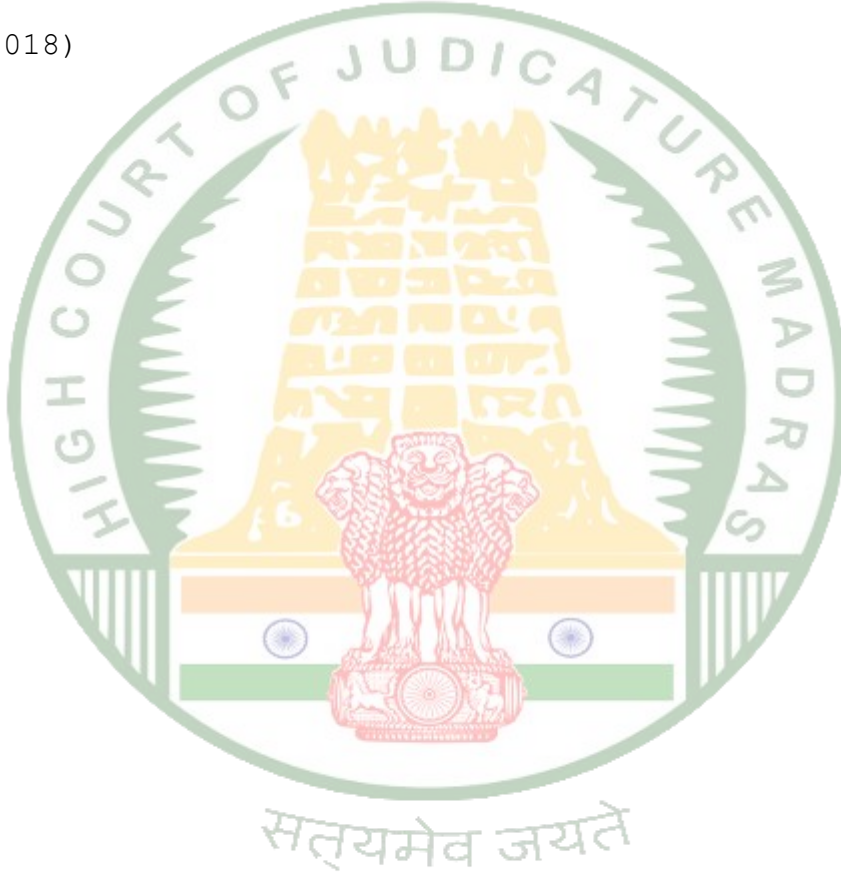
To

1.The II Additional District Court,
Erode.

+1cc to Mr.N.MANOKARAN, Advocate, S.R.No. 6098

C.M.A.No.2751 of 2016
and C.M.P.No.19898 of 2016

GMI (CO)
TR(08/02/2018)



WEB COPY